

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
SOUTH CAROLINA ELECTRIC AND GAS)
COMPANY) Docket Nos. 52-027 COL
(Virgil C. Summer Nuclear Station,) 52-028 COL
Units 2 and 3))

In the Matter of)
PROGRESS ENERGY CAROLINAS, INC) Docket Nos. 52-022 COL
(Shearon Harris Nuclear Power Plant,) 52-023 COL
Units 2 and 3))

In the Matter of)
VIRGINIA ELECTRIC and POWER)
COMPANY d/b/a DOMINION VIRGINIA) Docket No. 52-017 COL
POWER and OLD DOMINION ELECTRIC)
COOPERATIVE, LLC)
(Combined License Application for North)
Anna Unit 3))

NRC STAFF'S ANSWER TO SUPPLEMENTAL COMMENTS IN SUPPORT OF EMERGENCY
PETITION REGARDING FUKUSHIMA TASK FORCE REPORT

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INTRODUCTION

On August 10 and 11, 2011, Supplemental Comments in Support of the Emergency Petition ("Supplemental Comments") were filed in the three above-captioned combined license ("COL") proceedings.¹ On those dates and on August 12, 2011, new contentions addressing issues similar to those raised in the Supplemental Comments were filed in the remaining COL proceedings and in most pending license renewal proceedings.² These comments

¹ Supplemental Comments . . . in Support of Emergency Petition Regarding NEPA Requirements to Address Safety and Environmental Implications of the Fukushima Task Force Report (Aug. 11, 2011).

² The NRC staff will respond to the new contentions according to the contention pleading schedule set forth in 10 C.F.R. § 2.309(h)(1). However, the Supplemental Comments do not include a contention, and the rules governing intervention petitions and contentions therefore do

supplemented an Emergency Petition to Suspend All Pending Reactor Licensing Decisions (“Emergency Petition”) that was filed between April 14-18th, 2011, in response to the accident at the Fukushima Dai-ichi nuclear power plant in multiple new reactor licensing cases, license renewal cases, and design certification rulemakings pending before the NRC.³ For the reasons set forth below, the Supplemental Comments do not justify the suspension of the licensing decisions involved, or any of the other forms of relief requested in the Emergency Petition.

BACKGROUND

On March 11, 2011, an earthquake of magnitude 9.0 occurred off the coast of Japan. The earthquake caused the shutdown of the three units of the Fukushima Dai-ichi power plant that were operating at the time (Units 1, 2, and 3) as well as the loss of offsite power to the station. Subsequent tsunami waves caused the loss of all ac electrical power at Units 1 through 5 at the site. This resulted in loss of cooling at Units 1, 2 and 3, resulting in damage to the nuclear fuel. These and other events resulting from the earthquake and tsunami are described in greater detail in Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (July 12, 2011) (“Task Force Report”) at pp. 7-14 . The Task Force Report, issued on July 12, 2011, was prepared pursuant to a Tasking Memorandum directing the NRC staff to “establish a senior-level task force to conduct a methodological and systematic review of . . . processes and regulations to determine whether the agency should make additional improvements to [its] regulatory system” Memorandum from Chairman Jaczko to R.W. Borchardt, Executive Director for

not apply. The NRC’s regulations do not include a specific schedule for filing supplemental comments to petitions pending before the Commission, or for filing answers to such comments. The NRC staff therefore interprets the Supplemental Comments as a motion to supplement the Emergency Petition previously filed in the above-captioned proceedings, and has followed the schedule set forth in 10 C.F.R. § 2.323(c) regarding answers to motions.

³ Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemakings Pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (Apr. 14-18, 2011).

Operations, Tasking Memorandum – COMGBJ-11-0002 – Actions Following the Events in Japan (Mar. 23, 2011), ADAMS Accession No. ML1108208750..

I. THE SUPPLEMENTAL COMMENTS ARE INTENDED AS PART OF THE EMERGENCY PETITION PENDING BEFORE THE COMMISSION

Between April 14 and 18, 2011, the Emergency Petition was filed by multiple petitioners in all COL and license renewal proceedings pending before the NRC. The Emergency Petition requested the following forms of relief in light of events at the Fukushima Dai-ichi plant: (1) suspension of all licensing decisions pending completion of the Task Force Report and issuance of any regulatory decisions or environmental analyses based on it; (2) suspension of all proceedings with respect to issues being investigated by the task force; (3) completion of an analysis to determine whether the Fukushima accident “poses new and significant information that must be considered in environmental impact statements to support the licensing decisions for all new reactors and renewed licenses”; (4) completion of an analysis of the regulatory implications of the accident, and publication of that analysis for public comment; (5) establishment of special procedures for interested parties to raise issues related to the Fukushima accident in licensing decisions; (6) suspension of all activities described in (1) and (2) above pending the results of an independent inquiry into the accident; and (7) establishment by the President of an independent investigation into the implications of the accident. Emergency Petition at 1-3. The Emergency Petition was accompanied by a supporting declaration signed by Dr. Arjun Makhijani (“First Makhijani Declaration”).

The applicants in the licensing proceedings listed in the Emergency Petition filed individual answers to the petition on May 2, 2011. The NRC staff filed a consolidated answer (“Staff Answer”) in all relevant proceedings on the same date.⁴ In its answer, the staff argued that neither the Atomic Energy Act (“AEA”) nor the National Environmental Policy Act (“NEPA”)

⁴ NRC Staff Answer to Emergency Petition to Suspend All Pending Reactor Licensing Decisions Pending Investigation of Lessons Learned from the Fukushima Daiichi Nuclear Power Station Accident (May 2, 2011).

requires the forms of relief that the petitioners requested. *Id.* at 28. Staff reviews of design certification and COL applications already include consideration of severe accident scenarios as required by 10 C.F.R. §§ 52.47(a)(23) and 52.79(a)(38), and the Commission has the opportunity to examine the adequacy of the staff safety and environmental findings in its mandatory hearings regardless of whether any intervenors participate in a given proceeding. *Id.* at 28-29. Moreover, any petitioners who identify materially new information may file contentions in contested proceedings that remain open, and may petition to reopen the record of closed proceedings under 10 C.F.R. § 2.326. *Id.* at 29. For these reasons, there is no need for the Commission to create special procedures for issues arising from the Fukushima Dai-ichi accident, especially in the majority of new reactor licensing cases that are not scheduled for completion in the near term. *Id.*

As of the date of this filing, the Commission has not yet ruled on the Emergency Petition. On July 12, 2011, the Task Force Report was published. This report contains twelve recommendations for consideration by the Commission. See Task Force Report at 69-70. On August 10 and 11, 2011, the Supplemental Comments were filed in the three captioned COL proceedings. On August 19, 2011, the Secretary of the Commission sent a Staff Requirements Memorandum to the NRC's Executive Director for Operations directing the NRC staff to review and assess the recommendations in the Task Force Report and provide recommendations to the Commission. Memorandum from Andrew L. Bates, Acting Secretary, to R.W. Borchardt, Executive Director for Operations, Staff Requirements – SECY-11-0093 – Near-Term Report and Recommendations for Agency Actions Following the Events in Japan (Aug. 19, 2011), ADAMS Accession No. ML1123100210.

II. PROCEDURAL STATUS OF THE THREE CAPTIONED PROCEEDINGS

The Supplemental Comments were filed in proceedings related to three pending COL applications: Virgil C. Summer Nuclear Station, Units 2 and 3 (“Summer”); Shearon Harris Nuclear Power Plant, Units 2 and 3 (“Harris”); and North Anna Power Station, Unit 3 (“North

Anna”). A second declaration by Dr. Arjun Makhijani (“Second Makhijani Declaration”) accompanied all three filings. The three COL proceedings are currently at different procedural stages, as described below.

The Summer COL application, which references the AP1000 certified design, was submitted to the NRC in March 2008. The final environmental impact statement (“FEIS”) for the project was published in April 2011. See NUREG-1939, *Final Environmental Impact Statement for Combined Licenses for Virgil C. Summer Nuclear Station Units 2 and 3* (Apr. 2011) (“Summer FEIS”). The NRC staff safety evaluation report was published on August 18, 2011. See Final Safety Evaluation Report for Combined Licenses for Virgil C. Summer Nuclear Station Units 2 and 3 (Aug. 2011). No intervention petitions were granted with respect to the Summer COL application, and the contested proceeding before the Licensing Board is therefore closed. See *South Carolina Electric & Gas Co. and South Carolina Public Service Authority (Also Referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 and 3), LBP-10-06, 71 NRC ___ (Mar. 17, 2010) (slip op.). An uncontested hearing before the Commission is currently anticipated to occur in October, 2011.

The Harris COL application, which also references the AP1000 certified design, was submitted to the NRC in February 2008. The NRC staff’s safety and environmental reviews are both ongoing; the safety review is currently scheduled for completion in 2013, and the environmental review for completion in 2014. There are no contentions currently pending before the Licensing Board, and the contested proceeding is therefore closed. See *Progress Energy Carolinas, Inc.* (Shearon Harris Nuclear Power Plant, Units 2 and 3), LBP-09-8, 69 NRC 736, 746 (2009), *aff’d* CLI-10-09, 71 NRC ___ (Mar. 10, 2010) (slip op. at 39-42). No uncontested hearing before the Commission is currently scheduled.

The North Anna COL application, which originally referenced the ESBWR design certification application reviewed under Docket No. 52-101, was submitted to the NRC in November 2007. An FEIS for the original COL application was published in February 2010.

See NUREG-1917, *Supplemental Environmental Impact Statement for the Combined License (COL) for North Anna Power Station Unit 3* (Feb. 2010). This FEIS supplemented a prior FEIS prepared in connection with the early site permit (“ESP”) previously issued for the North Anna site. See NUREG-1811, *Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site* (Dec. 2006). In June 2010, the applicant revised its COL application to reference the US-APWR design. Letter from Eugene S. Grechek, Vice President, Nuclear Development, Dominion Energy, Inc., to NRC Document Control Desk (June 28, 2010) (ADAMS Accession No. ML102040697). For this reason, the NRC staff published a Notice of Intent to Prepare a Supplemental Environmental Impact Statement in the *Federal Register* in February 2011. 76 Fed. Reg. 6638 (Feb. 7, 2011). This document is currently scheduled for completion in 2012, and the NRC staff’s safety review of the revised COL application is scheduled for completion in 2013. All contentions previously admitted in the proceeding have been resolved, and there are no contentions currently pending before the Licensing Board. See *Virginia Electric and Power Co. d/b/a Dominion Virginia Power and Old Dominion Electrical Cooperative* (North Anna Power Station, Unit 3), LBP-11-10, 73 NRC __ (Apr. 6, 2011) (slip op. at 36). The applicant has filed a motion to clarify that rejection of the last proposed contentions terminated the contested portion of the proceeding. Dominion’s Motion for Clarification of LBP-11-10 (Apr. 18, 2011). The Licensing Board has not yet ruled on this motion. No uncontested hearing before the Commission is currently scheduled.

DISCUSSION

According to the petitioners, the Supplemental Comments provide new arguments in support of the Emergency Petition currently pending before the Commission. The petitioners argue first and foremost that the recommendations in the Task Force Report demonstrate that the level of protection currently provided by NRC regulations is inadequate to ensure protection of public health, safety, and the environment. Supplemental Comments at 3; see *also* Second Makhijani Declaration ¶ 11. From this starting point, the petitioners argue that “[t]he conclusions

and recommendations presented in the Task Force Report constitute ‘new and significant information’ whose environmental implications must be considered before the NRC may make a decision” on new reactor licensing. *Id.* at 12. The petitioners therefore claim that any conclusions in environmental documents associated with the three COL applications must be revisited, because compliance with NRC safety regulations is no longer sufficient to ensure that environmental impacts of accidents are acceptable. *Id.* at 13; see also Second Makhijani Declaration ¶ 11.

The petitioners also make several distinct claims regarding both the content of the Task Force Report and the deficiencies they allege in environmental documents issued in the three COL proceedings. First, the petitioners claim that new reactor environmental licensing documents do not adequately address the environmental analysis of design basis accidents, severe accidents, and severe accident mitigation alternatives (“SAMAs”). Supplemental Comments at 13-14. Second, the petitioners assert that the Task Force Report requires supplementation of environmental documents in the three proceedings to address recommendations related to seismic and flooding events. *Id.* at 15. Finally, the petitioners argue that all twelve recommendations in the Task Force Report be considered in the environmental reviews in the three captioned COL proceedings before licensing decisions are made. *Id.* at 18. The petitioners conclude with a request that the Supplemental Comments be considered in the Commission’s deliberations on the Emergency Petition. *Id.* at 21.

As further discussed below, the Supplemental Comments fail to provide justification for the relief requested in the Emergency Petition, do not accurately characterize the Task Force Report, and are procedurally irregular.

I. NOTHING IN THE SUPPLEMENTAL COMMENTS SUPPORTS THE POSITION THAT THE RELIEF REQUESTED IN THE EMERGENCY PETITION MUST BE GRANTED

Nothing in the Supplemental Comments or the Task Force Report rebuts the staff’s position that, given the procedural mechanisms already in place to address potential new and

significant information from any source, there is no need to suspend licensing decisions in the three proceedings nor adopt any of the other relief the petitioners request in the Emergency Petition. As previously stated by the staff, neither the AEA nor NEPA requires the relief that the petitioners requested. Staff Answer at 28. The petitioners appear to argue that NEPA requires the NRC to address the environmental implications of the Task Force Report prior to issuing a license. Supplemental Comments at 12. However, the petitioners fail to explain why such consideration, even if warranted, must be done via the mechanisms they propose.

II. THE SUPPLEMENTAL COMMENTS ARE NOT SUPPORTED BY THE TASK FORCE REPORT

The petitioners' overarching argument, that the Task Force Report demonstrates the inadequacy of current NRC safety regulations and therefore of all related environmental reviews, is not supported by the Task Force Report itself. The task force states unambiguously "continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security." Task Force Report at 18. Furthermore, the Task Force Report does not take any position on NRC's environmental reviews.

The petitioners appear to believe that the Task Force Report calls for a change to the way accidents are treated in environmental documents. See Supplemental Comments at 13-15. The Task Force does discuss the distinction between design basis accidents and severe or beyond design basis accidents. Task Force Report at 17-22. It suggests creating a new category of events designated as "extended design basis" and including a number of existing regulatory requirements under this heading. *Id.* at 20. It notes that this change in the regulatory framework would not, by itself, create any new regulatory requirements, although it could eventually result in the addition of new issues under the extended design basis heading. *Id.* at 21.

The petitioners appear to have interpreted this section of the Task Force Report as support for a claim either that severe accidents are not currently addressed in NRC environmental reviews, or that the way they are addressed must be changed. See Supplemental Comments at 13-14. To the extent that the petitioners intend the former interpretation, they are simply incorrect. The Environmental Standard Review Plan (“ESRP”), which provides guidance for all NRC COL reviews, includes instructions for NRC staff reviewers to consider the environmental impacts of both design basis accidents and severe accidents. See generally NUREG-1555, *Environmental Standard Review Plan*, Chapter 7 (Oct. 1999). The Summer FEIS, the only completed FEIS in the three captioned proceedings, addresses the environmental impacts of design basis accidents at 5-80 to 5-82, and of severe accidents at 5-82 to 5-92. To the extent that the petitioners intend to challenge the adequacy of this analysis rather than its existence, they should file contentions pursuant to 10 C.F.R. § 2.309 in the relevant proceeding.

The Supplemental Comments also include a discussion of SAMAs, which are considered in NRC environmental reviews. See, e.g., Summer FEIS at 5-92 to 5-96. According to the petitioners, the Task Force Report includes a recommendation that all SAMAs be incorporated into the set of features required in all nuclear power plants “without regard to cost as fundamentally required for all NRC standards that set requirements for adequate protection of health and safety.” Supplemental Comments at 14. Neither the Task Force Report nor the declaration submitted in support of the Supplemental Comments contains any statement to that effect.

Any such recommendation would be contrary to the intent of SAMA analyses, which are related to the probabilistic risk assessment (PRA) requirement of 10 C.F.R. § 50.34(f)(1)(i) and include cost–benefit analysis by definition. See ESRP at 7.3-1 to 7.3-5. As the Commission has stated, SAMAs are safety enhancements intended to reduce the risk of severe accidents. *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power

Station), CLI-10-11, 71 NRC __, __ (Mar. 26, 2010) (slip op. at 3). A SAMA analysis examines the extent to which implementation of the SAMA would decrease the probability-weighted consequences of the analyzed severe accident sequences. *Id.* “Significantly, NRC SAMA analyses are not a substitute for, and do not represent, the NRC NEPA analysis of potential impacts of severe accidents.” *Id.* at __ (slip op. at 37). Rather, SAMA analyses are rooted in a cost-beneficial assessment:

SAMA analysis is used for determining whether particular SAMAs would sufficiently reduce risk – *e.g.*, by reducing frequency of core damage or frequency of containment failure – for the SAMA to be cost-effective to implement. The SAMA analysis therefore is a [PRA] analysis. If the cost of implementing a particular SAMA is greater than its estimated benefit, the SAMA is not considered cost-beneficial to implement.

Id. at __ (slip op. at 3). For a SAMA analysis, the “goal is *only* to determine what safety enhancements are cost-effective to implement.” *Id.* at __ (slip op. at 39) (emphasis added).

Because the portions of the Supplemental Comments related to design basis accidents, severe accidents, and SAMAs are not supported by the Task Force Report, the arguments contained therein do not provide additional support for the actions requested in the Emergency Petition.

The petitioners’ further assertion that the Task Force Report requires supplementation of environmental documents in the three proceedings to address recommendations related to seismic and flooding events also does not accurately reflect the report’s contents. The petitioners cite portions of the Task Force Report that recommend existing licensees reevaluate seismic and flooding hazards at their sites and make any necessary changes to structures, systems, and components that are important to safety. Supplemental Comments at 16, citing Task Force Report at 30. The petitioners conclude that, as a consequence of this recommendation, the environmental documents in the three COL proceedings are incomplete and require supplementation. *Id.* However, the Task Force Report states clearly that all current design certification and COL applicants address seismic and flooding issues adequately under

existing regulations and guidance. Task Force Report at 71. This portion of the Supplemental Comments therefore fails to supply any additional support for the arguments first submitted in the Emergency Petition.

Finally, the assertion that all twelve of the task force's recommendations must be addressed in environmental documents prior to COL issuance is not supported by the report itself. As stated previously, the Task Force Report makes no mention of environmental reviews. It also recommends specific strategies for addressing its recommendations in the safety reviews of design certification and COL applications. Task Force Report at 71-72. The petitioners do not address this portion of the report, which specifically states that not all recommendations related to the existing reactor fleet apply to new reactors. This portion of the Supplemental Comments therefore fails to supply any additional support for the arguments first submitted in the Emergency Petition, or for the relief requested therein.

III. THE SUPPLEMENTAL COMMENTS ARE PROCEDURALLY IRREGULAR

The Supplemental Comments are intended as additional support for the Emergency Petition currently under consideration by the Commission. Supplemental Comments at 21. As the staff stated in response to that petition, any petitioners who identify materially new information may file contentions in contested proceedings that remain open, and may petition to reopen the record of closed proceedings under 10 C.F.R. § 2.326. Staff Answer at 28. The staff notes that other petitioners have filed contentions based on the Task Force Report in most pending COL proceedings and all license renewal proceedings. A petition for rulemaking under 10 C.F.R. § 2.802 has also been filed to address issues that the authors believe are generic to multiple proceedings. These two approaches are, unlike the Emergency Petition and Supplemental Comments thereto, clearly contemplated by NRC regulations as means for interested parties to raise issues in before the NRC, and are therefore the procedurally correct alternatives.

Moreover, the filing is not accompanied by a motion to supplement the initial Emergency Petition, nor does it comply with the 10-day filing time for motions under 10 C.F.R. § 2.323(a). It also lacks a certification by the petitioners' attorney regarding consultation with other parties prior to filing the Supplemental Comments, as required by 10 C.F.R. § 2.323(b). The petitioners did contact the North Anna applicant and NRC staff the day before filing to request consent to a motion to re-open the record and admit new contentions in that proceeding⁵; however, the NRC staff has no record of any attempt to consult in the other two COL cases or in North Anna concerning the Supplemental Comments. The NRC's regulations clearly state that "[a] motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion. 10 C.F.R. § 2.323(b).

⁵ Despite the consultation regarding a motion to reopen the record and admit new contentions in the North Anna proceeding, no such filing was served on the NRC staff.

CONCLUSION

Neither the AEA nor the NEPA requires the forms of relief that the petitioners requested in the original Emergency Petition, and the Supplemental Comments contain no new arguments or information that would change that conclusion. Existing mechanisms under 10 C.F.R. Part 2 provide the procedural approaches that interested parties should use to raise new issues related to the Fukushima Dai-ichi accident or any document related thereto. Furthermore, the Task Force Report that serves as the basis for the Supplemental Comments does not support the arguments the Supplemental Comments contain. Finally, these comments are procedurally irregular and do not comply with the NRC's rules for filing motions under 10 C.F.R. § 2.323. For these reasons, the Emergency Petition should be denied.

Respectfully Submitted,

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Dated at Rockville, Maryland
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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VIRGINIA ELECTRIC AND POWER CO.,)
dba DOMINION VIRGINIA POWER,)
and OLD DOMINION ELECTRIC) Docket No. 52-017-COL
COOPERATIVE)
)
(North Anna Power Station, Unit 3))

CERTIFICATE OF SERVICE

I hereby certify that copies of the NRC STAFF'S ANSWER TO SUPPLEMENTAL COMMENTS IN SUPPORT OF EMERGENCY PETITION REGARDING FUKUSHIMA TASK FORCE REPORT have been served upon the following persons by Electronic Information Exchange this 22nd day of August, 2011:

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